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Date of Decision: 24th January 1996

SPECIAL CIVIL APPLICATION NO. 5717 OF 1986

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Shri P.V. Hathi, Advocate, for the Petitioners

Shri D.N. Patel, Asst. Govt. Pleader, for Respondents Nos. 1 and

Shri D.K. Mehta, Advocate, for Respondent No. 3  
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CORAM: A.N. DIVECHA, J.  
(Date: 24th January 1996)

ORAL JUDGMENT

The order passed by and on behalf of the State of Gujarat (Respondent No.1 herein) on 1st October 1986 under sec. 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) rejecting the application made by and on behalf of

petitioner No. 1 herein is under challenge in this petition under Art. 226 of the Constitution of India.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that petitioner No.1 agreed inter alia to purchase one parcel of land bearing Survey No. 194 (part) admeasuring 2500 square meters situated at Memnagar in the city of Ahmedabad from Respondent No. 3 and obtained its possession. Thereafter it applied for exemption under sec. 20(1) of the Act to respondent No. 1. By its order passed on 1st October 1986 by and on behalf of respondent No. 1, the application for exemption came to be rejected. Its copy is at Annexure A to this petition. That aggrieved the petitioners. They have therefore approached this Court by means of this petition under art. 226 of the Constitution of India for questioning its correctness.

3. This petition cannot be entertained in view of the binding ruling of the Supreme Court in the case of S. Vasudeva v. State of Karnataka and others reported in AIR 1994 Supreme Court 923. It has been held therein that exemption under sec. 20(1) of the Act cannot be granted for the purpose of transferring the land for whatever reasons including undue hardship to the landholder. The aforesaid binding ruling of the Supreme Court is on all fours applicable in the present case. The exemption under sec. 20(1) of the Act is sought for permitting petitioner No.1-Society to purchase the land from respondent No. 3 by means of execution of a sale deed. That cannot simply be permitted to be done in view of the aforesaid binding ruling of the Supreme Court.

4. It is true that no opportunity of hearing was given to the petitioner before passing the impugned order at Annexure A to this petition. Ordinarily, the impugned order would be set aside on this ground alone. However, since it would not be open to respondent No. 1 to grant exemption in this case in view of the aforesaid binding ruling of the Supreme Court, no useful purpose will be served by setting aside the order at Annexure A to this petition on the ground of contravention of the audi alteram partem rule and remanding the matter to respondent No. 1 for the purpose of fresh disposal according to law. It would be an empty formality. The jurisdiction under art. 226 of the Constitution of India is discretionary. It would be a sound exercise of discretion not to interfere with the order at Annexure A to this petition on the facts and in the circumstances of the case and in view of the aforesaid binding ruling of the Supreme Court.

5. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

6. At the oral request of learned Advocate Shri P.V. Hathi for the petitioners, the operation of this judgment is stayed for a period of 3 months from today to enable the aggrieved petitioners to carry this matter to the higher forum by way of appeal or to pursue any other remedy available under the law.

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